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3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (1)(11), except as noted at Findings 20, 43, 50, 56, 60, 64, 70, 72, 73, 103, 105, 113, 118, 127, and 156.

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (111), except as noted at Findings 44, 61, 65, 66, 71, 77, 80, 97, 114, and 142.

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, Subp. 1 and 1400.1100.

6. That the Administrative Law Judge has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 20, 43, 44, 50, 51, 56, 60, 61, 64, 65, 66, 70, 71, 72, 73, 78, 80, 81, 97, 103, 105, 113, 114, 118, 127, 142 and 156.

7. That due to Conclusions 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 31st day of October, 1985.

  
JON L. LUNDE  
Administrative Law Judge

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Supercedes \_\_\_\_\_      Date Appr. 7-22-86  
State Rep. In. V.2      Date Eff. 1-1-86

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**Rule 186**

EFFECTIVE DATE OCTOBER 26, 1984

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9510.1020 [Emergency] DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9510.1020 to 9510.1140 [Emergency] have the meanings given them in this part.

Subp. 2. Case manager. "Case manager" has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

Subp. 3. Client. "Client" means a person who is receiving training and habilitation services or intermediate care facility for the mentally retarded services funded under the medical assistance program.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or a designated representative.

Subp. 5. County. "County" means the county board of commissioners for the county which provides case management services to the client or the county board of commissioners' designated representative.

Subp. 6. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 7. Equipment. "Equipment" means aids designed to increase a client's independent functioning which are purchased for the client, remain the property of the client and can be moved with the client upon discharge.

Subp. 8. Intermediate care facility for the mentally retarded or ICF/MR. "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 9. Provider. "Provider" means the person or entity operating a licensed training and habilitation service or an ICF/MR.

Subp. 10. Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, and state and federal unemployment compensation taxes or costs.

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Subp. 11. Special needs rate exception payment. "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140 [Emergency].

Subp. 12. Staff intervention. "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 13. State hospital. "State hospital" means an ICF/MR or nursing home owned and operated by the state of Minnesota.

Subp. 14. Training and habilitation services. "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.21 to 252.261 and 256B.501. "Training and habilitation services" does not include waived services as defined in Minnesota Statutes, section 256B.501, subdivision 1.

#### 9510.1030 [Emergency] APPLICABILITY AND PURPOSE.

Subpart 1. Applicability. Parts 9510.1020 to 9510.1140 [Emergency] establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded. Parts 9510.1020 to 9510.1140 [Emergency] do not apply to persons with mental retardation who reside in a state hospital.

Subp. 2. Purpose. The purpose of the special needs rate exception is to provide to a specific client those services whose costs are not included in the per diem rate of the intermediate care facility for the mentally retarded or the per diem rate of the training and habilitation service. The special needs rate exception payment is intended to fund short-term special needs for a specific client in order to prevent the placement or retention of the client in a state hospital. The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted.

#### 9510.1040 [Emergency] APPLICATION TO BE COMPLETED BY PROVIDER.

Subpart 1. Application. The provider shall apply to the county for a special needs rate exception to cover the cost of additional equipment or services necessary to serve clients eligible under part 9510.1050 [Emergency], subpart 2. A separate application must be completed for each client unless

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the staff intervention or additional equipment is shared by the clients identified. If more than one client is included in the application, client information must be submitted for each client. The application must include the information in subparts 2 to 4.

Subp. 2. Information about client's needs and methods used to address needs. The provider must:

A. identify the client including:

- (1) name;
- (2) name and address of the client's legal representative;
- (3) medical assistance identification number;
- (4) date of admission or anticipated admission to the provider's program;
- (5) diagnosis;
- (6) age;
- (7) current residence; and
- (8) current day program;

B. describe the client's special need or needs which put the client at risk of state hospital placement or continued state hospital placement;

C. describe the proposed staff intervention including:

- (1) the amount of staff or consultant time required;
- (2) qualifications of the program staff or outside consultants providing the intervention;
- (3) type of intervention;
- (4) frequency of intervention;
- (5) intensity of intervention; and
- (6) duration of intervention;

D. describe the equipment needed and the plan for use of the equipment by the client;

E. identify the total cost and the unit cost of the equipment or the proposed staff intervention;

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F. describe the modifications needed to integrate the equipment and staff intervention into the client's individual program plan;

G. describe the projected behavioral outcomes of the staff intervention or the use of the equipment and when the outcomes will be achieved;

H. describe how the client's progress toward the behavioral outcomes in item G will be measured and monitored by the provider; and

I. describe the degree of family involvement with the client.

Subp. 3. Information about provider. The provider shall submit:

A. information identifying the provider including:

(1) name and address of the provider;

(2) name and address of the place where the services will be delivered, if different from subitem (1);

(3) name and telephone number of the person authorized to answer questions about the application; and

(4) medical assistance provider number; and

B. an explanation of the efforts used to meet the client's needs within the provider's current per diem rate, including modifications made to the individual program plan and other available resources used.

Subp. 4. Supporting documentation. The provider shall submit with the application the following:

A. A copy of the individual program plan including the measurable behavioral outcomes which are anticipated to be achieved by the client as a result of the proposed staff intervention or the equipment.

B. For an ICF/MR, a copy of the most recent facility profile as prepared by the quality assurance and review section of the Minnesota Department of Health. For a training and habilitation service program, a description of the physical condition, medical condition, and behavioral characteristics of the clients currently served by the program.

C. Documentation of the provider's historical costs on which the current per diem rate is based. An ICF/MR provider shall submit a copy of the cost report submitted under parts 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301-2.05315 [Temporary]

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on which the current per diem rate is based and a copy of the most recent rate determination letter. A training and habilitation service program shall submit a copy of the translation worksheet required in 12 MCAR SS 2.0300-2.0304 [Temporary] and any adjustments made by the county or the commissioner.

D. Work papers showing the method used to determine the cost of the intervention identified in subpart 2, item E, including the hourly wage of staff who will implement the intervention, the unit cost of consultation or training services, and the unit cost of equipment requested.

E. Documentation that any equipment requested in the application is not available from the Department of Vocational Rehabilitation or covered under parts 9500.0750 to 9500.1080.

F. Documentation that any consultant services requested in the application are not services covered under parts 9500.0750 to 9500.1080.

G. The name and address of any vendor or contractor to be reimbursed by the special needs rate exception and the name of the person or persons who will actually provide the equipment or services if known.

9510.1050 [Emergency] COUNTY REVIEW OF PROVIDER'S APPLICATION.

Subpart 1. Criteria. The county shall determine if the provider submitting the application and the client or clients identified in the application meet the criteria in subparts 2 to 5. The county shall submit to the commissioner the applications which meet the criteria in subparts 2 to 5.

Subp. 2. Client eligibility. A client shall be eligible for a special needs rate exception if the client meets the criteria in items A to D:

A. the client is eligible for medical assistance under Minnesota Statutes, chapter 256B;

B. the client is a resident of an ICF/MR;

C. the client is mentally retarded according to the definitions in parts 9525.0010 to 9525.0100 or their successor parts or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

(1) severe maladaptive behavior as listed in unit (a), (b), or (c);

(a) self-injurious behavior which is a clear

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danger to the client; or

(b) aggressive behaviors which are a clear danger to others; or

(c) destructive behaviors which result in extensive property damage;

(2) severe physical disabilities such as deafness, blindness, or motor problems which require short-term environmental orientation training;

(3) medical conditions as listed in unit (a) or (b);

(a) degenerative diseases diagnosed by a physician such as Hurler's syndrome or tuberous sclerosis; or

(b) short-term medical disabilities that can be treated within the level of care the Minnesota Department of Health certifies the ICF/MR to provide, such as temporary immobility, intermittent catheterization, or post-operative recuperation;

D. the client is at risk of placement in a state hospital within 60 days or of remaining in a state hospital, unless additional resources are provided through parts 9510.1020 to 9510.1140 [Emergency] due to:

(1) conditions and characteristics described in item C; and

(2) the unavailability of other resources as determined under subpart 4.

Subp. 3. General provider eligibility. A provider shall be eligible for a special needs rate exception if the provider meets the following criteria:

A. the provider is willing to serve or continue to serve a client who is eligible for a special needs rate under subpart 2 if the special needs rate exception is approved;

B. the provider's historical cost per diem does not include the historical cost of serving clients with similar needs; and

C. the existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances. Amounts deposited in a funded depreciation account under 12 MCAR S 2.05304 [Temporary] C. shall not be affected by this item.

Subp. 4. Availability of other resources. The provider shall be eligible for a special needs rate exception only if the county determines that:

A. There are no other existing resources or services covered under parts 9500.0750 to 9500.1080 available to meet the client's needs.

B. There are no other appropriate ICFs/MR training and habilitation services or other services located within a reasonable distance available to meet the person's needs within their current rates. To determine if another ICF/MR training and habilitation service or other service is appropriate for the client, the case manager shall:

(1) Consider the placement preferences of the client and family of the client. If the client cannot communicate a preference, the client's legal representative must be consulted.

(2) Consider whether the location of the alternative ICF/MR training and habilitation service or other service will impair the current level of family involvement.

(3) Consider the length of time that the client will need the additional services.

Subp. 5. Evaluation of staff intervention and equipment purchases. The county shall review the information submitted in accordance with part 9510.1040 [Emergency] to determine if:

A. the proposed staff intervention and equipment purchases meet the identified client needs and will result in continued placement in the ICF/MR or training and habilitation service after the special needs rate exception terminates; and

B. all proposed services and service providers comply with applicable professional and program licensure standards.

#### 9510.1060 [Emergency] COUNTY APPROVAL PROCESS.

Subpart 1. Time period. The county shall approve or deny applications within 15 working days of the date the complete application was received from the provider. Approval or denial shall be made in accordance with subparts 2 to 4.

Subp. 2. Consultation with county of financial responsibility. If the county which receives the provider's application is not the county of financial responsibility, the county which receives the provider's application shall consult with the county of financial responsibility before approving the provider's application. The county of financial responsibility's statement of approval or objections must be

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forwarded to the commissioner with the provider's approved application or notice of denial. If the county of financial responsibility's statement of approval or objections are not forwarded to the commissioner, the county's application shall not be considered complete.

Subp. 3. County approval or denial. The county shall review the provider's application to determine if the application is complete and meets the criteria in 9510.1020 to 9510.1140 [Emergency]. The county shall approve the provider's application if the application is complete and meets the criteria. The county shall deny the provider's application if the application is incomplete or does not meet the criteria unless the provider's application can be adjusted to meet the criteria or the county submits a written request for a variance under part 9510.1100 [Emergency].

Subp. 4. Notification. The county shall send the provider and the client written notice of the county's decision on the provider's application as soon as a decision is made or within 15 working days after receipt of the application, whichever occurs first. If the county denies the provider's application, the county shall notify the commissioner, provider, client, and the client's legal representative of the reasons for the denial in writing. The notice of the denial must state the specific provisions of the provider's application on which the county based the denial.

#### 9510.1070 [Emergency] COUNTY'S APPLICATION TO COMMISSIONER.

If the county approves the provider's application, the county shall apply to the commissioner for a special needs rate exception within 15 working days of the date of receipt by the county from the provider of a complete application and supporting documentation. To apply for a special needs rate exception, the county shall submit to the commissioner a copy of the provider's approved application and supporting documentation and the following documents:

A. documentation of the steps taken by the county to determine client and provider eligibility in accordance with parts 9510.1020 to 9510.1140 [Emergency], including documentation of the conditions which put the client at risk of state hospital placement or continued state hospital placement;

B. a copy of the client's most recent individual service plan;

C. a copy of the client's most recent annual individual program plan in the ICF/MR, individual program plan in the training and habilitation service, most recent medical evaluation, and most recent behavioral assessments, including any programs for aversive and deprivation procedures;

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D. a copy of the client's state hospital discharge plan, if the special needs rate exception is requested to facilitate the client's discharge from a state hospital;

E. a copy of the county's plan to coordinate and monitor the implementation of the client's individual service plan;

F. documentation that the county of financial responsibility has approved the changes in the individual service plan if the county submitting the application is not the county of financial responsibility or if the county of financial responsibility does not approve the changes, a statement of the reasons the county of financial responsibility does not approve of the changes and a description of the actions, if any, to be taken by the county of financial responsibility; and

G. a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated by the county and the providers. If the special needs rate exception is not requested for both the day training and habilitation service and the ICF/MR, a written explanation must be provided by the county.

9510.1080 [Emergency] COMMISSIONER'S DETERMINATION.

The commissioner shall review the county application to determine if the requirements in parts 9510.1020 to 9510.1140 [Emergency] are satisfied in determining whether to approve or deny an application for a special needs rate exception. The commissioner shall notify the county, provider, the client, and the client's legal representative of the decision within ten working days of the date the commissioner receives a completed application from the county. The special needs rate exception, if approved by the commissioner, shall be effective as of the date the county submits a completed application to the commissioner. If the commissioner denies the application, the commissioner shall notify the county, provider, and client or client's representative of the reasons for the denial.

9510.1090 [Emergency] ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

Subpart 1. Established by commissioner. The commissioner shall establish the special needs rate exception payment according to subparts 2 to 5.

Subp. 2. Allowable costs. Unless otherwise reimbursable by the Department of Vocational Rehabilitation or by direct payments under parts 9500.0750 to 9500.1080, the following costs, if approved by the commissioner in accordance with parts 9510.1020 to 9510.1140 [Emergency] and 12 MCAR S 2.05311

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